

**AGREEMENT FOR SERVICES**  
**by and between the**  
**CITY OF SANTA CLARA, CALIFORNIA,**  
**and**  
**TRANSCANADA TURBINES INC.**

**PREAMBLE**

This agreement for the performance of services ("Agreement") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, ("Effective Date") by and between TransCanada Turbines Inc., a Nevada corporation with its primary business address at 5021 Lisa Marie Court, Bakersfield, California 93313 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

**RECITALS**

- A. City desires to secure professional services more fully described in this Agreement;
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

**AGREEMENT PROVISIONS**

**1. EMPLOYMENT OF CONTRACTOR.**

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

**2. SCOPE OF SERVICES TO BE PROVIDED.**

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work

required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

**3. COMMENCEMENT AND COMPLETION OF SERVICES.**

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written *Notice to Proceed* from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written *Notice of Final Acceptance*. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within fourteen (14) days of its receipt of such request.

**4. COMPENSATION AND PAYMENT TO CONTRACTOR.**

- A. In consideration for Contractor's complete performance of the Services, City shall pay Contractor for all Services rendered by Contractor in accordance with the rate per hour for labor and cost per unit for materials as outlined in Exhibit B entitled "Fee Schedule." The payments made by City under this Agreement will be the amounts charged for Services provided and billed by Contractor, subject to verification by City, pursuant to the hourly rates set forth in the Fee Schedule supplied in writing by Contractor and maintained on file with City at the time the Services are provided.
- B. Contractor shall bill City for the Services provided by Contractor during the preceding month, subject to verification by City. Payment to Contractor for Services will be made within thirty (30) days of City's receipt of invoice.

**5. TERM OF AGREEMENT.**

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate at the end of the day three (3) years from the Effective Date.

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**6. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST.**

This Agreement is a contract for professional services. City and Contractor bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of City. However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

**7. NO THIRD PARTY BENEFICIARY.**

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

**8. SUBCONTRACTING.**

None of the Services provided under this Agreement shall be performed by subcontractors unless such subcontractors are specifically identified by Contractor and pre-approved by City in writing.

**9. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.**

It is agreed that in performing the work required under this Agreement, Contractor and any person employed by or contracted with Contractor to furnish labor and/or materials under this Agreement is not an agent nor employee of City. Contractor has full rights to manage its employees subject to the requirements of the law.

**10. NO PLEDGING OF CITY'S CREDIT.**

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

**11. CONFIDENTIALITY OF MATERIAL.**

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not,

without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

**12. OWNERSHIP OF MATERIAL.**

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

**13. USE OF CITY NAME OR LOGO.**

Contractor shall not use City's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

**14. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.**

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

**15. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.**

Contractor represents that its personnel are qualified to furnish services in the form of labor and materials of the type and quality which City requires and that Contractor agrees to perform all work in accordance with generally accepted business practices and performance standards of the industry. City expressly relies upon Contractor's representations regarding its skills and knowledge. City shall restrict its service requests

to those projects which are within the skill and capability levels of Contractor and its employees.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by City for similar projects.

**16. MONITORING AND EVALUATION OF SERVICES.**

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify Contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

**17. PERFORMANCE OF SERVICES.**

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

**18. CORRECTION OF SERVICES.**

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

**19. WARRANTY.**

In respect of the Field Support Services which are proved to the reasonable satisfaction of the Contractor not to have been provided or performed with the skill and care commensurate with the recognized standards prevailing in the industry, (fair wear and tear to City Property and Products excepted) Contractor will repair or replace any defective products, or re-perform the relevant services.

If any defect or failure occurs in a Part or workmanship within the period specified in Clause 1.6 in the sole and reasonable opinion of the Contractor, then Contractor shall replace or repair the defective/failed Part or re-perform the Services at the City's site or Contractors' authorized Canadian facility.

Contractor's liability shall not exceed, in any case, \$500,000.00.

Any replacement or repair under the terms of the warranty shall in turn be warranted in accordance with the provisions of this Agreement, provided however, the foregoing shall not serve to extend any warranty beyond twelve (12) months from the date of completion of the original Field Support Services performed.

Contractor makes no warranty in respect of material or part supplied by the City for fitting to the City's Engine by Contractor.

Subsequent to the Services provided, this warranty shall be subject to the following conditions:

- 1) The Engine was properly installed by qualified personnel;
- 2) The Engine was operated and maintained in accordance with applicable manufacturer's guidelines and standards, overhaul manuals, service bulletins and Customer's handbooks;
- 3) The Engine has been used under normal operating conditions, has/have not been subjected to misuse, neglect or accident and has/have not subsequently been repaired or altered, except by the Contractor;
- 4) There the Engine is to be stored for any period prior to installation, acceptance by the Contractor of any warranty claim, is conditional upon the Part being stored in accordance with the manufacturer's recommended storage procedures and conditions laid down in the maintenance instructions prepared by the manufacturer; and,
- 5) Any warranty claim made shall be made in writing and delivered to the Contractor within thirty (30) days after the defect or failure is discovered.
- 6) Warranty claims shall only be considered by the Contractor in respect to defects that become apparent and are notified by the City in writing to the Contractor before the expiry of the following:

**[General Electric LM6000]**

<b>Calendar Time:</b>	12 months from installation,
<b>Running Time:</b>	8,000 hours or,
<b>Delivery Time:</b>	18 months from delivery

*Whichever of the above limitations occurs first.*

**Components (Repair of Spares):**

<b>Calendar Time:</b>	12 months from delivery
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- 7) It is expressly agreed that there are no warranties of any kind, expressed, implied, statutory or otherwise, as to merchantability, fitness for particular purpose or for any other matter relating to the Field Support Services performed hereunder, except those warranties set out above.
- 8) In no event shall the Contractor be responsible for any incidental or consequential damages incurred by the City in respect of any defect or failure covered by the warranty set out above. The within warranty is made in lieu of all other warranties and may not be altered or amended without the express written approval of both Parties.
- 9) Any warranty is personal to the Customer and shall not be assigned without prior written consent of the Contractor; said consent shall not be unreasonably withheld.

## **20. FAIR EMPLOYMENT.**

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

## **21. HOLD HARMLESS/INDEMNIFICATION.**

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising there from, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

To the extent to which City is proven contributory negligent, City will be responsible for the portion of the damages attributable to the City's contributory negligence. Contractor shall have no obligations to indemnify under this Article to the extent that any liability arise from the sole negligence of any of the Indemnities.

## **22. INSURANCE REQUIREMENTS.**

- A. During the term of this Agreement, and for any required time thereafter as set forth below, Contractor shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:
  - 1) commercial general liability policy (bodily injury and property damage);
  - 2) comprehensive automobile liability policy;
  - 3) workers' compensation and employer's liability policy; and
- B. Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts,

required certificates of insurance, and coverage verifications as defined in Exhibit C entitled "INSURANCE REQUIREMENTS."

**23. AMENDMENTS.**

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated into this Agreement. Such changes, which are mutually agreed upon by City and Contractor, shall be incorporated in amendments to this Agreement.

**23. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT.**

This Agreement embodies the agreement between City and Contractor and its terms and conditions. No other understanding, agreements, conversations, or otherwise, with any officer, agent, or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

**25. SEVERABILITY CLAUSE.**

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

**26. WAIVER.**

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

**27. NOTICES.**

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

The Office of the Director of Electric Department  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050  
or by facsimile at (408) 261-2717



And to Contractor addressed as follows:

Contractor's notice address:  
TransCanada Turbines Inc.  
5021 Lisa Marie Court  
Bakersfield, California, 93313  
or by facsimile at (661) 836-4355

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

**28. CAPTIONS.**

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

**29. STATUTES AND LAW GOVERNING CONTRACT.**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

**30. COMPLIANCE WITH LAWS.**

Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**31. DISPUTE RESOLUTION.**

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The costs of mediation shall be borne by the Parties equally.
- C. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

- D. Any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to binding arbitration through JAMS, in San Jose, CA. Claims arising out of this Agreement or its breach, shall be submitted to arbitration through JAMS within thirty (30) days of the written request of one Party after the service of that request on the other Party. In the event of arbitration which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and costs of arbitration, regardless of the outcome of the arbitration.

**32. VENUE.**

In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

**33. OTHER AGREEMENTS.**

This Agreement shall not prevent either Party from entering into similar agreements with others.

**34. CONFLICT OF INTEREST.**

Contractor certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person associated with Contractor has any interest that would conflict in any manner or degree with the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which constitute a violation of said provisions. Contractor will advise City if a conflict arises.

**35. TERMINATION OF AGREEMENT.**

**a. Termination Without Cause**

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

**b. Termination For Cause**

For purposes of this Agreement, the term "default" shall mean the failure of any Party to perform any material obligation in the time and manner provided by this Agreement. Either Party may terminate this Agreement in the event of a default by the other Party by providing a written Notice of Termination to the defaulting Party. Such Notice of Termination shall become effective no less than ten (10) calendar days after a Party receives such notice. Such Notice of Termination for cause shall include a statement by the terminating Party setting forth grounds for determination of default under the Agreement. In the event this Agreement is terminated for cause as set forth under this section, City shall pay Contractor for all Services satisfactorily performed up to the date the Agreement is terminated. City may deduct from such payment the amount of actual damage, if any, sustained by City due to Contractor's failure to perform the Services or for breach of this Agreement.

**c. Opportunity To Cure Default**

Upon receipt of a Notice of Termination by a Party arising from its default under this Agreement, the defaulting Party shall have five (5) days from the receipt of such notice to cure the default by making such payment or performing the required obligation. If the default is cured to the mutual satisfaction of the Parties, the Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for cause.

**37. COMPLIANCE WITH ETHICAL STANDARDS.**

As a condition precedent to entering into this Agreement, Contractor shall:

- a. Read the attached Exhibit D entitled "ETHICAL STANDARDS," and,
- b. Execute the affidavit attached as Exhibit E entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

**38. LIMITATION OF LIABILITY**

In no event under this Agreement or otherwise, whether as a result of Breach of Contract, Warranty, Tort (including negligence of any degree) or otherwise, shall either Party be liable to the other Party for any consequential, special, incidental, punitive, exemplary or indirect damages, including, but not limited to, loss of use, loss of revenue, loss of profit, loss of contract, or loss of goodwill, arising or related to this Agreement, whether such damages are arising from Agreement or negligence.

The total cumulative liability of Contractor and any of Contractor's related companies to the City for all claims, losses, damages and expenses resulting in any way from

performance of this Agreement shall not be greater the Five Hundred Thousand Dollars (\$500,000.00).

The total cumulative liability of City to Contractor and any of Contractor's related companies for all claims, losses, damages and expenses shall not be greater the Five Hundred Thousand Dollars (\$500,000.00).

**THE TERMS OF THIS CLAUSE SHALL BE PRIMARY TO ANY OTHER CONFLICTING TERM OF THIS AGREEMENT**

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to form:

\_\_\_\_\_  
HELENE L. LEICHTER  
City Attorney

Attest:

\_\_\_\_\_  
JENNIFER SPARACINO  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408)615-2210  
Fax: (408)241-6771

\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

"City"

**TRANSCANADA TURBINES INC.**  
a Nevada corporation

By:   
\_\_\_\_\_  
BEVERLY STEWART

Title: Director  
Address: 5021 Lisa Marie Court  
Bakersfield, California 93313  
Telephone: (661) 836-4070  
Facsimile: (661) 836-4355  
Email: bev\_stewart@tcturbines.com

**AGREEMENT FOR SERVICES**  
**by and between the**  
**CITY OF SANTA CLARA, CALIFORNIA**  
**and**  
**TRANSCANADA TURBINES**

**EXHIBIT A**  
**SCOPE OF SERVICES**

The Services to be performed for the City by the Contractor under this Agreement are to provide to the City's satisfaction and by the time and budget as specified by the City. All materials, costs and expenses shall be included by Contractor within budgeted amount as pre-approved by City.

Contractor to provide maintenance, repair and inspection of the LM6000 Combustion Turbine and associated equipment.

**AGREEMENT FOR SERVICES  
by and between the  
CITY OF SANTA CLARA, CALIFORNIA  
and  
TRANSCANADA TURBINES**

**EXHIBIT B  
FEE SCHEDULE**

In no event shall the amount billed to City by Contractor for services under this Agreement exceed \$150,000.00 subject to budget appropriations.

**AGREEMENT FOR SERVICES**  
**by and between the**  
**CITY OF SANTA CLARA, CALIFORNIA**  
**and**  
**TRANSCANADA TURBINES**

**EXHIBIT C**  
**INSURANCE REQUIREMENTS**

**INSURANCE COVERAGE REQUIREMENTS**

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

**A. COMMERCIAL GENERAL LIABILITY INSURANCE**

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:  
  
\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
  - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
  - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
  - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance



as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, above.

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these

3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

**AGREEMENT FOR SERVICES**  
**by and between the**  
**CITY OF SANTA CLARA, CALIFORNIA**  
**and**  
**TRANSCANADA TURBINES**

**EXHIBIT D**  
**ETHICAL STANDARDS**

**Termination of Agreement for Certain Acts.**

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor<sup>1</sup> does any of the following:
    - a. Is convicted<sup>2</sup> of operating a business in violation of any Federal, State or local law or regulation;
    - b. Is convicted of a crime punishable as a felony involving dishonesty.<sup>3</sup>
    - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or (3) performing a public contract or subcontract;
    - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
    - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

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<sup>1</sup> For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

<sup>2</sup> For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

<sup>3</sup> As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with the contractor can be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If the City determines that Contractor no longer has the financial capability<sup>4</sup> or business experience<sup>5</sup> to perform the terms of, or operate under, this Agreement; or
  2. If the City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, contractor's failure to maintain a required state issued license, failure to obtain a City business license (if applicable), or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process, or a contract is terminated pursuant to the these provisions, Contractor may appeal the City action to the City Council by filing a written request with the City Clerk to have the matter heard within ten (10) days of the notice given by the City. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

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<sup>4</sup> Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

<sup>5</sup> Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

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**EXHIBIT E**  
**AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS**

I, Beverly Stewart, being first duly sworn, depose and state I am the Director (title or capacity) of TransCanada Turbine Inc. (entity name) and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

TRANSCANADA TURBINES  
a Nevada corporation



\_\_\_\_\_  
BEVERLY STEWART  
Director

**NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED**

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.

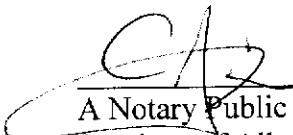
NOTARIAL CERTIFICATE

CANADA                                 )  
PROVINCE OF ALBERTA         )  
TO WIT:                                 )

BEFORE ME, the undersigned authority, personally appeared Beverly J. Stewart, know to me to be the Treasurer for TransCanada Turbines Inc., a corporation duly organized and existing under the laws of the State of Nevada, and before me she executed the foregoing document in her capacity as Treasurer for TransCanada Turbines Inc.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Executed this 19<sup>th</sup> day of September 2008.

  
A Notary Public in and for the  
Province of Alberta  
Calvin D. Jim  
Barrister and Solicitor

My Commission Expires  
at the Pleasure of  
HER MAJESTY THE QUEEN

**AGREEMENT FOR SERVICES  
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**EXHIBIT F  
MILESTONE SCHEDULE**

(If Applicable)